IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2420 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

WIPRO LIMITED

Versus

BHAVNAGAR ELECTRICITY CO LTD.

Appearance:

MR MANISH R BHATT for Petitioner

RULE SERVED BY DS for Respondent No. 1

MR RD RAVAL for Respondent No. 3, 4, 5, 6, 7, 8, 9,10,11,12,13,14,15,16,17,18

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 28/07/2000

ORAL JUDGEMENT

Heard learned Sr. Counsel Mr. R.P. Bhatt with Mr. M.R. Bhatt for the petitioner. Also heard learned counsel Mr. R.D. Raval for respondents No. 3 to 18.

2. This petition challenges the award dated

23-10-1996 made by the Labour Court, Bhavnagar by which award the Labour Court has directed the petitioner to reinstate 16 persons mentioned therein in the employment of the petitioner with 50 % back wages.

The said 16 persons were admittedly the employees of Bhavnagar Electricity Company, which is respondent No.1 in the petition. Under settlement arrived at with the concerned persons and the union those persons were retrenched with effect from 1-12-1981. The retrenchment compensation was accepted by the concerned persons. The requisite procedure as provided under the Industrial Disputes Act, 1947 was also completed. Despite the aforesaid, the Assistant Labour Commissioner, Bhavnagar made reference on 13-1-1983. The respondent No.1 filed detailed reply and pointed out that, in view of the settlement and the arrangement, reference was not tenable. The reference was resisted by the respondent No.1 who was the employer of the said concerned persons.

While the reference was pending before the Labour Court, Bhavnagar, under agreement dated 22-11-1985, the petitioner purchased land, plant and machinery. Under the agreement between Bhavnagar Electricity Company and the petitioner, the liability of those concerned persons was specifically excluded. The petitioner was not a successor in business in Bhavnagar Electricity Company. Still, on an application made, the Labour Court, Bhavnagar permitted impleadment of the petitioner in the pending reference.

3. The aforesaid facts are not in dispute. In fact, the Labour Court has also recorded that, there was a settlement under section 2P of the Act and an agreement was signed between the concerned persons through the union and the Bhavnagar Electricity Company, who was the employer of the said concerned persons. It was however found on evidence that the said agreement was not acted upon in letter & spirit. The Labour Court however found that after retrenchment on 1-12-1981 evidence of some of the persons showed that they had worked for some time. Therefore, the retrenchment agreement dated 1-12-1981 was null and void and was not acted upon. Though the agreement was proved and the same was signed by the union representative. On oral evidence of some of the persons, the Labour Court found that as some work was taken by the Bhavnagar Electricity Company after retrenchment, the retrenchment agreement was null and void.

On this peculiar finding which was totally extraneous, the Labour Court directed reinstatement and

that too by the petitioner. Without considering the relevant facts and material produced on record, the Labour Court found that the petitioner was a successor and, therefore, the concerned persons must be reinstated by the petitioner with 50 % back wages.

4. This finding of the Labour Court treating the petitioner as successor is devoid of any evidence and is unsustainable on facts. The settlement under section 2P of the Act and the retrenchment agreement are accepted and if settlement is not acted upon, it is the Bhavnagar Electricity Company to face the consequences. Therefore, there was no question of directing reinstatement of the concerned workmen by the petitioner even if the settlement/ agreement was held as null and void. It is proved that Bhavnagar Electricity Company is still a going concern and it has not been wound up nor its name struck off as defunct company from the Registrar of Companies. Bhavnagar Electricity Company being respondent No.1, has not appeared before this Court despite service effected on it. It is not disputed that it is a going concern. In case of a going concern, the question of treating petitioner as a successor is irrelevant, and it is their responsibility to satisfy the award because it was their action which was under challenge. The petitioner can not be treated as successor in interest or title.

5. On the aforesaid grounds, the award of the Labour Court is liable to be set aside and the same is set aside accordingly, in so far as the petitioner is concerned, leaving it open for the respondent workmen to recover back wages awarded to them by the Labour Court from their employer Bhavnagar Electricity Company Ltd, in accordance with law. In the course of hearing earlier, it was however suggested by learned counsel on behalf of the concerned persons that some ex gratia payment may be made by the petitioner to those persons since they have been out of job and the question is of their sustenance.

6. It is brought on record of this Court that, after following due process of law the undertaking of the petitioner at Bhavnagar is closed with effect from 16-5-1997. This Court also therefore had suggested to the counsel for the petitioner to examine the suggestion to pay some ex gratia payment, since the closure is already effected, which would cover closure compensation, gratuity amount etc. Admittedly back wages being liability of Bhavnagar Electricity Company Limited, the workmen may recover from Bhavnagar Electricity Company Limited, the back wages awarded to them by the Labour

Court. The suggestion of the counsel for the respondents was examined and in view of the expression of the Court, the same on principle was accepted by the management of the petitioner.

7. In light of the aforesaid facts and the fact that even the petitioner's undertaking at Bhavnagar was closed with effect from 16-5-1997 after following due procedure in accordance with law, the question of ex gratia compensation was examined and accepted by the management. The Union - Respondent No.2 and Respondent Nos. 3 to 18 the concerned persons represented by Mr. R.D. Rawal and the petitioner represented by its counsel Mr. R.P. Bhatt with M.R. Bhatt have mutually agreed the terms of settlement and have jointly requested this Court to pass the appropriate order recording the settlement between petitioner and respondent No. 2 to 18. In view of the settlement, the petitioner has agreed to make a lump sum ex gratia of Rs.3,25,200/- in total discharge of any liability whatsoever, though legally as a result of setting aside of the award there will be no liability on the petitioner.

Learned counsel Mr. R.D. Rawal for the respondents workmen has authority to accept the settlement and on instructions of Mr. G.N. Rathod, Union representative, agreed to accept the settlement as reached between the parties. This amount of Rs.3,25,200/- will be disbursed by the petitioner in the following manner. However, the respondent No.2 will obtain the discharge from the respondents No. 3 to 18 including the heirs of respondents No. 3, 4, 13 and 17.

Resp.No.	Name	Amount in Rs.
3.	Heirs of Shri. Kantilal Ratilal	20,325/-
4.	Heirs of Shri. Bhimabhai Vaghabhai	20,325/-
5.	Shri. Vasram Jivabhai	20,325/-
6.	Shri. Adambhai Sulemanbhai	20,325/-
7.	Shri. Valibhai Karimbhai	20,325/-
8.	Shri. Khimabhai Karna	20,325/-
9.	Shri. Ishwarlal Jamnadas	20,325/-
10.	Shri. Devjibhai Lakhabhai	20,325/-
11.	Shri. Balabhai Sondhabhai	20,325/-
12.	Shri. Shankar Nanubhai	20,325/-
13.	Heirs of Shri. Jamalbhai Virabhai	20,325/-
14.	Shri. Karsanbhai Natthubhai	20,325/-
15.	Shri. Damjibhai Jivabhai	20,325/-
16.	Shri. Sabbir Suleman	20,325/-
17.	Heirs of Shri. Alarakh Alibhai	20,325/-
18.	Shri. Kantibhai Kuberbhai	20,325/-

Total Rs... 3,25,200/-

On the above payment being made, the petitioner will stand discharged from any liability of whatsoever nature arising out of the award which is quashed and set aside. The names of the heirs will be provided by the Union representative, who will be responsible in case of every eventuality of correctness of heirs.

8. As per the interim order made by this Court earlier, the petitioner has deposited an amount of Rs.8,86,197/- with State Bank of Saurashtra, Nirmalnagar, Bhavnagar branch. The petitioner shall be entitled to withdraw the said amount from the Bank. The petitioner shall issue individual cheques in favour of respondents No. 3 to 18 as above. The payment will be made in three weeks in presence of Mr. Gunavantrai N. Rathod, the representative of the Union.

9. No appearance has been filed by respondent No.1 Bhavnagar Electricity Company Ltd. despite service of notice of Rule and in the circumstances stated as above, the petitioner company having agreed to pay to the workmen as above, the petitioner company is discharged from the effect and operation of the award. Unlawful termination was the action of Bhavnagar Electricity Company Ltd. and therefore it will be their duty to satisfy the award in that regard. It will be open for the workmen to take up appropriate proceedings to recover back wages awarded by the Labour Court in accordance with law. Accordingly the petition is allowed. Rule is made absolute to the aforesaid extent. I make no order as to costs.

Dt: 28-7-2000 (P.K. Sarkar, J)

/vgn.